



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

**March 1, 1954**

**Hon. John H. Winters  
Executive Director  
State Department of Public Welfare  
Austin, Texas**

**Letter Opinion No. MS-117**

**Re: Method of purchasing postage  
used by district offices of the  
Commodity Distribution Division.**

**Dear Mr. Winters:**

You have asked whether or not the State Department of Public Welfare may reimburse the revolving funds created and operated under your commodity distribution program for purchases of postage from such funds in the respective distribution districts. You indicate that under your present procedure postage expense is handled very much like other expenses for goods and services used in the several districts. Among other things, you state:

"The postage is paid for by means of a check drawn against the Revolving Fund in the respective Distribution Districts. The checks are made payable to the Postmaster and a receipt from the Postmaster is obtained. The receipts are retained by the Department and when the purchase voucher is made for reimbursement of the Revolving Funds in the respective Distribution Districts, we make requests for reimbursement of postage in the same manner as we request reimbursement for services and other expenditures."

You further state that the Comptroller has rejected the item of postage, basing his decision on Article 4386a of the Revised Civil Statutes and Section 15 of Article VI of the current general appropriation act.

The commodity distribution program is authorized by Chapter 305, Acts of the 53rd Legislature. Certain features of this law were recently construed in Attorney General's Opinion MS-99 (1953), in which it was held that the necessary expenses incident to operation of district offices could be paid out of the revolving funds created by the Act and that the revolving funds could be reimbursed for these expenses out of the assessments collected from recipients of commodities. However, the question now raised with respect to the purchase of postage out of the revolving funds is for the most part unrelated to the issues passed on in that opinion.

Article 4386a, Vernon's Civil Statutes, reads:

"Warrants for the purchase of United States postage stamps and for the payment of postoffice box rents by any board or department of the State Government shall be drawn upon the State Treasurer by the State Comptroller in favor of the United States Postoffice; and the State Treasurer shall pay warrants so issued out of any funds appropriated for such purposes, irrespective of the serial number of said warrants and irrespective of the priority of the issuance of said warrants, and such warrants shall be endorsed by the postmaster of the United States Postoffice to which they are made payable."

This statute was passed in 1933. The emergency clause of the Act (Ch. 51, Acts 43rd Leg., R.S., 1933, p. 103) reads as follows:

"The fact that the State government is on a deficiency basis during a considerable portion of the year, and the fact that stamps cannot be purchased from United States Postoffices except for cash, and the fact that the inability of the United States Postoffices to accept State warrants as cash payments of stamps when the State is on a deficiency basis, creates an emergency . . . "

The primary objective of Article 4386a was to make an exception to the standard procedure for paying warrants set out in Article 4386, which provides that "in the event of a question and necessity arising as to the priority of payment of any such warrants, they shall be paid in order of their serial number, such warrants to be numbered at all times in the order of receiving the accounts in the Comptroller's Office." Article 4386a gives postage warrants a priority and allows payment ahead of other warrants having lower serial numbers.

It is our opinion that the first clause of Article 4386a does not prohibit purchase of postage stamps except by warrant payable to the Postmaster drawn by the Comptroller. It prescribes the form of the warrant when the Comptroller is drawing a warrant for the direct purchase of postage, but it does not make direct purchase through such warrants the exclusive method for buying postage to be used by state departments. Where the operating expenses of a department are paid by some method other than the direct issuance of Comptroller's warrants to claimants, Article 4386a would not apply.

You have mentioned Section 15 of Article VI of the current appropriation act (Ch. 81, Acts 53rd Leg., 1953, at p. 549), which reads in part:

"None of the moneys appropriated in this Act shall be expended for postage stamps or post office box rent except on vouchers made payable to a United States Post Office, and the warrant or check shall be endorsed by the Postmaster from whom the purchase is made."

This section is of no relevance to money appropriated by Chapter 305 because by its own terms Section 15 relates only to "moneys appropriated in this Act." However, it is our opinion that if Section 15 were applicable, it would not prohibit the purchase of postage in the manner you have outlined. Each of the departmental appropriation acts passed since the enactment of Article 4386a contains substantially this same provision. It requires a voucher payable to the post office and the postmaster's endorsement of the warrant or check, but it does not require that the Comptroller draw a warrant payable directly to the post office. The use of the word "check" indicates a legislative interpretation that in some instances the post office might receive something other than a warrant drawn by the Comptroller. It is our opinion that the procedure followed in this case would amount to a compliance with this provision.

In answer to your question, we are of the opinion that the revolving funds may be reimbursed for purchases of postage in the respective distribution districts.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By

Mary K. Wall  
Assistant

MKW:hp:da